



## Submission to the Consultative Group on the Past in Northern Ireland

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## Submission to the Consultative Group on the Past

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January 2008

This submission made to the Consultative Group on the Past in Northern Ireland outlines several areas for consideration when thinking about the issue of dealing with the past.<sup>2</sup> It consists of four sections. First, the breadth of the issue of dealing with the past is considered. Second, the question of victims of political violence is discussed. Third, some points about the idea of a truth commission for Northern Ireland are outlined. The submission then ends by extracting five broad lessons that may be helpful in thinking about dealing with the past in any society in transition.

### 1. Depth and width of the process of dealing with the past

Dealing with the past and building reconciliation is a long-term, deep and wide process. There are *multiple* (generally context specific) ways used to deal with the past in different countries. In a submission such as this it is difficult to outline all of these. Furthermore, research in Northern Ireland has shown that reconciliation is a multifaceted concept in itself and is also defined in different ways in different contexts.<sup>3</sup> Although this submission makes specific reference to the notion of a truth commission, it is important that we think about ‘dealing with the past’ as a process much wider than a narrow debate on truth commissions. One criticism I would have of the South African approach in particular was an over-reliance on stressing the South African Truth and Reconciliation Commission (TRC) as the primary mechanism for dealing with the past. Clearly a *range* of mechanisms were going to be necessary over a long period of time.

The Healing Through Remembering consultation process heralded the most thorough public and civil society investigation to date of strategies for dealing with the past in Northern Ireland.<sup>4</sup> Their consultation identified fourteen key approaches to dealing with the past.<sup>5</sup> These include: storytelling and oral history; memorials; museums, exhibitions and art; public and collective

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<sup>2</sup> This submission is based on an earlier submission to the Northern Ireland Affairs Committee in 2004, however, it has been significantly revised and updated.

<sup>3</sup> See Bloomfield, D., Barnes, T., & Huyse, L. (Eds.). (2003). *Reconciliation after Violent Conflict: A Handbook*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance; Hamber, B., & Kelly, G. (2005). *A Place for Reconciliation? Conflict and Locality in Northern Ireland* (No. Report 18). Belfast, Northern Ireland: Democratic Dialogue; and Porter, N. (2003). *The Elusive Quest: Reconciliation in Northern Ireland*. Belfast: Blackstaff Press.

<sup>4</sup> See Healing Through Remembering. (2002). *Report of the Healing Through Remembering Project*. Belfast: Healing Through Remembering. See also <http://www.healingthroughremembering.com> for more details. In sum, this project undertook an extensive national consultation process and published its findings on how the events concerning the conflict in and about Northern Ireland could be remembered.

<sup>5</sup> Healing Through Remembering. (2002). *Report of the Healing Through Remembering Project*. Belfast: Healing Through Remembering.

commemorations; truth recovery processes; other forms of legal processes such as trials and inquiries; community and intercommunity interactions; support for individuals and victims; research and social policy development; a Centre for remembrance; a financial response, i.e. the establishment of a memorial fund for victims, and a satisfactory compensation system; education and training; supporting current remembering processes; and self-examination of institutions, and apologies.

More specifically, the Project recommends: (1) developing a living memorial museum; (2) establishing a day of reflection; (3) setting up a network of commemoration projects; (4) establishing a collective story-telling initiative; (5) establishing an initiative to take the recommendations forward; and (6) initiating an acknowledgment process towards truth recovery. In terms of truth recovery, the Project felt that a formal truth-recovery process should be carefully considered, though only as *one part* of dealing with the past. Importantly, the HTR Report stipulates that an important first step to a truth-recovery process is acknowledgement, by all, of acts of commission and/or omission.

I am aware that the HTR project has made a separate submission to the Group. However I mention it as I believe the breadth of the areas touched on by the Project's Report—and the different methods for dealing with the past referred to in their consultation and current work—highlight the various components that will need to be addressed to holistically deal with the past. I draw attention to them because some, if not all, will need to be dealt with in one way or another in any society attempting to deal with the past and build reconciliation.

## **2. Victims and dealing with the past**

Support services for victims of political violence are a critical component of dealing with the past. A long-term process of dealing with the needs of victims should be put in place. Steps for addressing the needs of victims have been set up in Northern Ireland.<sup>6</sup>

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<sup>6</sup> Many researchers and commentators mark the beginning of concerted government involvement in making policy for victims/survivors as beginning—for better or worse—with the Bloomfield Report appearing in May 1998, as well as the Wilson Report in the Republic of Ireland. These were state-sponsored initiatives aimed at making recommendations that could assist victims and recognise their suffering. The Bloomfield Report recommends further consideration of a central Northern Ireland memorial. It does not recommend a truth commission, but says this issue requires ongoing review. The Bloomfield Report, however, was met with mixed reactions. One criticism raised was that the report prioritised victims of paramilitary violence and did not pay sufficient attention to the victims of state violence. Since the Bloomfield Report there have been other government initiatives. A Victims' Liaison Unit was set up in the Northern Ireland Office (NIO) in June 1998, and a Victims' Unit in the Office of the First and Deputy First Minister as part of the Northern Ireland Assembly in July 2000. To date, the NIO and the Victims' Unit of OFMDFM claims to have spent (or allocated) over £20 million on victim-related projects. From the EU, £5.8 million has been made available for so-called victims' work for the period 2002-2004, although spending can continue to 2006. Most of these rather recent developments have been orientated towards community groups, i.e. mainly grassroots support to self-help groups and counselling organisations for victims. The launch of the Victim Strategy Document by the Victims' Unit on 6 August 2001, from a policy perspective, is the most notable government development to date in terms of assisting victims. The document sets out to develop a 'strategy to deliver practical help and services' to victims. A range of other policy-orientated initiatives have also taken place. For example, reviews of the compensation scheme and of counselling were undertaken; victim representatives were nominated to the Civic Forum; a Memorial Fund was set up; the Human Rights Commission explored the possibility of including a specific focus on victims in the Bill of Rights; and victim issues were mentioned in the Northern Ireland Assembly's Programme for Government. At the same time, over sixty victim groups, drawing from across the major political perspectives, have continued to actively operate. Their work is extensive and far-reaching, including service-delivery work such as counselling, befriending, and alternative therapies, as well as lobbying and advocacy. A Core Funding Scheme was set up and groups have been largely funding through this and the EU Peace Programme.

That said, state responses to the impact of the conflict in and about Northern Ireland have been criticised for being slow and limited. There was until recently a ‘policy silence’ in the areas of health, social services, education and other provisions for victims of the conflict.<sup>7</sup> This has resulted in a legacy of distrust (especially of statutory services) within many community groups working with victims of the conflict. My research and that of others has shown that the process of supporting victims came late in the day and initially was chaotic in its development. Although the process is stabilizing, there have also been the ongoing difficulties around core funding and the appointment of a Victims Commissioner.

The biggest threat to support services in Northern Ireland remains the lack of commitment to fund and support victims over the long-term. International lessons suggest victims support needs to continue for decades and the two-year funding cycles for Victim Group Core Funding in Northern Ireland is inadequate in that regard. Many victim groups remain concerned about the possibility of long-term funding, sustainability and support. Although they hold fairly divergent views at this stage about how best to deal with the past (e.g. should there be a truth commission, a memorial listing all those killed in the conflict), most however would agree that ongoing support remains a priority.

Having said that, providing extensive counselling or setting up public health facilities, although welcome, do not fully address the wider notion of dealing with the past. Of course, victim support services are necessary. Victims need to be provided with the space to tell their stories, be heard and be *officially* acknowledged. However, when considering the question of dealing with the past more broadly, we should not fall into the simplistic trap of arguing that revealing (telling the truth) or storytelling as it is sometimes called, is *instantaneously* healing. Storytelling may be a necessary step, but testimony is not sufficient in itself to heal all victims, address the wounds of the past or deal with the past more generally.

My work over the years has routinely shown that victims are unlikely to divorce the questions of truth, justice, labelling responsibility for violations, compensation and official acknowledgement, from the healing process. Therein lies the challenge: setting up sufficient support services for all victims of political violence could be envisaged, but integrating their other needs—some perhaps overridden in the name of peace, such as the right to justice—is infinitely more complex.

Victim rights, and the intricate needs of individual survivors with regard to truth, justice and reparation, are often negated by compromises made to ensure peace (such as the release of political prisoners). Governments and political parties may find themselves at odds with victims as political processes often move forward more rapidly than personal processes. If so, policymakers and governments will be especially required to deal as best they can with the frustrations of victims whose rights have been violated—a less than ideal position.

The denial of certain rights to victims often leads to the understandable desire by victims to want their pain to be legitimately heard. This sense of injustice is often at the heart of the conflict between different victim groups (and politicians) about who are the “real” victims of the conflict. It has become common for some groups to refer to themselves as “real” or “innocent”

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<sup>7</sup> See Hamilton, J., Thomson, K., & Smyth, M. (2002). *Reviewing REAL Provision: An evaluation of provision and support for people affected by the Northern Ireland Troubles*. Belfast: Northern Ireland Voluntary Trust.. This was also acknowledged by government, as Minister Des Browne noted “in all that time [thirty years of conflict] there were no policies in relation to victims.” See Irish Echo Online, February 19-25, 2003, Volume 76, Number 7.

victims in Northern Ireland.<sup>8</sup> Individuals from different sides of the conflict have alleged there is a hierarchy of victimhood, i.e. pointing out that their specific type of victimisation is given a lower official prioritisation than certain others. If we think of the injustices many have suffered, such a 'competition' for victimhood is understandable. Some victims also find the term (victim) disempowering and prefer survivor. That said there is a responsibility on politicians committed to peace to try to defuse this situation rather than play into it.

Brice Dickson, former Chair of the Northern Ireland Human Rights Commission, provides some useful pointers in dealing with this situation.<sup>9</sup> He notes the nature of victimhood differs according to the nature of the wrong that has been committed against the victim. The wrong has two aspects to it: the act itself (e.g., the killing, the assault, the threat) and the consequences of the act (e.g., the death, the injury, the fear). If we are to decide what rights victims should have, he argues, we should have regard for both aspects. The former calls for rights such as recognition, acknowledgement and apology. The latter calls for rights such as compensation and access to services. The former is more politically contentious as in most cases acknowledgement and recognition are dealt with by truth commissions and other official processes.

Rights in relation to service delivery are more straightforward. Law could underpin rights to compensation and adequate services, a Bill of Rights, if it was to be developed for Northern Ireland, could also underpin this. Issues such as a right to truth and justice would also have to be addressed. The difficulty, however, comes when dealing with the complexity of needs of victims in transitional societies related to truth, justice, recognition and acknowledgement. Addressing such issues essentially requires political solutions and commitment to openness, transparency and public acknowledgment in some form (e.g. through reparations, apology, and political parties, paramilitaries, security forces and governments actively participating in peacebuilding initiatives and truth-recovery processes if necessary).

Having said that, victims' rights in criminal justice studies, albeit somewhat developed, remain the poor relative to many other aspects of criminal justice the world over. In transitional justice studies the concept is almost non-existent. A more rigorous engagement with the issue of victims' rights still needs to be developed and articulated locally and internationally. Focusing ongoing discussions concerning victims and dealing with the past in and about Northern Ireland in a rights discourse from the outset may be a useful starting point.

### **3. A truth commission for Northern Ireland?**

Although victims need to be at the forefront of any policy for addressing the past, the question of dealing with the past and truth-recovery concerns wider society. In 1998 I undertook research for INCORE (University of Ulster) on whether Northern Ireland should have a truth commission. I concluded that, at that time, an official truth recovery process seemed unlikely for Northern Ireland.<sup>10</sup> Others made similar arguments; namely, that no moral or political authority existed to support an entity such as a truth commission.<sup>11</sup> I further argued in my

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<sup>8</sup> Morrissey, M., & Smyth, M. (2002). *Northern Ireland After the Good Friday Agreement: Victims, Grievance and Blame*. London: Pluto Press.

<sup>9</sup> Dickson, B. (2003). Victims' Rights. In B. Hamber & R. Wilson (Eds.), *Recognition and reckoning: The way ahead on victims issues* (pp. 47-51). Belfast, Northern Ireland: Democratic Dialogue.

<sup>10</sup> Hamber, B. (Ed.). (1998). *Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition*. Derry/Londonderry: University of Ulster & INCORE.

<sup>11</sup> NIACRO and Victim Support Northern Ireland. (1999). *All Truth is Bitter: A Report of the Visit of Doctor Alex Boraine*. Belfast: NIACRO and Victim Support Northern Ireland.

research that the balance of power between forces during transition determined government policy on issues.<sup>12</sup> In Northern Ireland, at that stage, the forces were too evenly weighed and all sides were opting to leave their truths hidden for the time being. As such:

Most political players demand truth from those they perceive as the other side or sides, but seem unwilling to offer the truth from their side, or acknowledge and take responsibility for their actions. This is mostly due to fear that such acknowledgement (public or otherwise) will weaken in the new dispensation and that the truth may be used against them within the context of the delicate peace that prevails. There are also those in Northern Ireland who refuse to accept that they did anything wrong or that their action (or inaction) was complicit in perpetuating the conflict.<sup>13</sup>

I have subsequently continued research in the area and clearly some of the power balances have not shifted significantly. However what has changed is that the political system has become more stable. In addition, initiatives such as Healing Through Remembering have shown what may be possible, i.e. it is possible for people from different backgrounds to reach some consensus on a way forward for dealing with the past. Drawing from the lessons of this project it is clear that trust building, co-operation and “generosity” are key to moving the process forward. I revisit this point at the end of this section.

That said, the end point has not shifted significantly from my earlier research and at a public level support for such truth recovery seems mixed. Lundy and McGovern recently carried out a survey through the Northern Ireland Life and Times Survey on public views about a truth commission. They found that 50% of people surveyed (in a representative survey of Northern Ireland) felt that it was important or very important for the future of Northern Ireland.<sup>14</sup> The research a truth commission was defined as ‘an inquiry where everyone would have to tell the truth about things to do with the “troubles”’. There were some minor religious differences in responses. According to the research “Catholics were a little more likely to state that a truth commission was either important or very important for the future (58% [*of Catholic respondents*]) than those of no religion (55%) and more again than Protestants (44%), although even in the latter case this represented more people than those that thought it unimportant (33%)”.<sup>15</sup> A sizeable proportion of people felt it was ‘Neither’ important nor unimportant (19%), and 28% felt it was unimportant. This research gives the best statistical indication yet of how the public feel about such an issue. The researchers conclude that “opinion is therefore quite divided on the idea of a truth commission for Northern Ireland”.<sup>16</sup> In addition, even those that were supportive of the idea doubted how effect it would be, i.e. 84% of those surveyed did not think you would ‘necessarily get the truth’ from a truth commission.<sup>17</sup>

That said, the debate and the intricacies of dealing with the past have gained political and public momentum in the last few years. In terms of dealing with the past there has been, among others, the Bloody Sunday Inquiry, commissions to investigate disappearances; inquiries into political murders north and south; cases before the European Court of Human Rights; the Historical Enquiries Team; and of course the Consultative Group on the Past set up by the British

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<sup>12</sup> Benomar, J. (1993). Confronting the Past: Justice in Transitions. *Journal of Democracy*, 4(1), 3-14.

<sup>13</sup> Hamber, B. (Ed.). (1998). *Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition*. Derry/Londonderry: University of Ulster & INCORE..

<sup>14</sup> Lundy, P., & McGovern, M. (2006). A Truth Commission for Northern Ireland? *Northern Ireland Life and Times Survey: Research Update*, 46.

<sup>15</sup> Ibid, p.1.

<sup>16</sup> Ibid, p.1.

<sup>17</sup> Ibid.

government to provide ways forward on the dealing with the past question.

At the civil society level, the Healing Through Remembering initiative, which has brought together former loyalist and republican combatants, British soldiers, members of the PSNI, victims of the conflict, people from church and civil society backgrounds, academics and others, to debate ways of dealing with the past. This project has made a significant contribution as was mentioned earlier. The project has, among other things, presented options for truth recovery, hosted a Day of Private Reflection, considered methods such as storytelling and provided ideas for a living memorial museum. The breadth and extent of this project, and its unique position in driving the dealing with the past debate from the bottom up, is unprecedented internationally.

Thus, it would be untrue to say this society is not capable of dealing with the past or making various attempts to do so. Rather the question is whether more is needed and whether a structured collective process is necessary.

On the international front there is much to learn. The South African TRC (as one example of a truth commission)<sup>18</sup> was a bold attempt, first and foremost, to uncover the truth about what had happened in its past and, in a minority of cases, this did occur. The atrocities of the past were opened up for debate, examination and for lessons to be learned. Each individual act of coming together (and there were several) or the few genuine acts of repentance seen during the process cannot be scoffed at in a deeply divided society. The TRC went a long way in naming individuals who were responsible for past atrocities and outlining the causes of the conflict and the wider historical context. It also taught some hard lessons about the complexity of dealing with a conflict-ridden past. It assisted in setting some accepted limits in the narrative of *what happened to whom* and, in this, reduced the range of permissible historical revisionism.<sup>19</sup>

Several of the TRC's recommendations or, more accurately, its calls for continuing social, economic and political reform in South Africa are also informative. The South African government now and in the future would do well to measure its progress against many of the TRC's recommendations. The South African TRC also held 'institutional hearings'. In these hearings influential sectors of society (e.g. the medical and health professions, judiciary, business community, churches, media) were publicly questioned on the way they contributed (or helped prevent) to creating an environment conducive to human rights violations. Findings were made against various sectors, as well as recommendations for how they could assist in developing a more robust human rights culture within their structures, while ensuring that South Africa becomes a more equal society.

That said, the TRC's amnesty provision meant that justice through the courts remains elusive for many victims. Granting amnesty in exchange for truth remains a difficult issue to bear for many victims in South Africa. Lauding South Africa for its innovative approach—trading truth for amnesty—is meaningless without referring to its context. South Africa's approach to reconciliation cannot be applied elsewhere without first analysing the power relations in that society and others. A truth commission granting amnesty as in the South African case is not usual practice. Most commissions focus on building a picture of the past, investigating unsolved cases and labelling responsibility, largely (but not exclusively) by using victim testimony. It is

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<sup>18</sup> There have been over 20 truth commissions around the world, each has lessons to teach. See Hayner, P. B. (2001). *Unspeakable Truths: confronting state terror and atrocity*. New York: Routledge; and McEvoy, K. (2006). *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland*. Belfast: Healing Through Remembering.

<sup>19</sup> Hamber, B., & Wilson, R. (2002). Symbolic Closure through memory, reparation and revenge in post-conflict societies. *Journal of Human Rights*, 1(1), 35-53.

possible for a truth commission, unlike the South African process, to collect testimony and to focus exclusively on recommend prosecutions as a result.<sup>20</sup>

That said, truth commissions are generally used to *consolidate peace* after a formal agreement has been secured, *not to try to make peace*. The issue of timing in the incomplete Northern Ireland process remains one of the biggest stumbling blocks at this point. This does not mean questions of truth and justice will disappear in Northern Ireland; they will need to be confronted, but when the time is right and when consensus on a method for doing this can be achieved. Arguably however the time is never completely right to undertake a difficult endeavour such as a truth commission. Bold visionary steps are sometimes needed.

The mandate of the South African TRC compelled it to investigate the ‘causes, nature and extent’ of the South African conflict. The TRC could have ventured more daringly into the ‘nature and extent’ of the conflict. In addition, the TRC could have fostered a greater recognition of the need for multiple and ongoing mechanisms over time to continue truth finding and deliver justice in South Africa. However, the South African TRC elucidated the broad causal and historical picture fairly well. This was made easier by the fact that a widely accepted truth already existed, i.e., apartheid was a morally abhorrent system that brutalised many. But, on assessment, the TRC did not simply highlight that apartheid was a crime against humanity—uncomfortable ‘truths’ of firmly held narratives about on all sides the South African conflict were challenged.

Contrary to this, the multitude of initiatives taking place in Northern Ireland, largely unofficial, mean that the ‘nature and extent’ of the conflict is fairly well documented. Ongoing projects and compilation of ‘victim lists’<sup>21</sup> have documented the extent of the conflict in Northern Ireland in great detail (although developing an *official* list of those injured and killed in the conflict would be a worthwhile endeavour).

However, unlike South Africa, agreeing on or at least having a broadly accepted narrative of the ‘causes’ of the Northern Ireland conflict is one of the biggest challenges to building some form of reconciliation into the future. The fear—not to mention complexity—of exploring the ‘causes’ in an open, honest and inclusive way is the principal obstacle to engaging in a macro truth finding process. Such a process, if designed correctly and impartially, would mean for all parties involved—including the governments, political parties, security forces, paramilitaries and the public at large—potentially compromising on long-held beliefs about the causes of the conflict. Or at least they would need to be prepared to allow their own perspectives to be scrutinized, and perhaps judged mistaken or misguided. The challenge such a process might present is a reason many would not support the idea of a truth commission, but equally this could be the very reason for making such a recommendation.

Many questions remain about the past in terms of truth and the secrets of the ‘dirty war’. For some victims the question of justice remains pressing. Although some apologies have been

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<sup>20</sup> The South African TRC however did hand names over to the Department of Public Prosecutors of those that did not apply for amnesty within the cut off dates. The El Salvadoran truth commission could recommend prosecutions although this was undone later by a general amnesty.

<sup>21</sup> See Ardoynne Commemoration Project. (2002). *Ardoynne: The Untold Truth*. Belfast: Beyond the Pale; Fay, M.-T., Morrissey, M., & Smyth, M. (1998). *Mapping Troubles related deaths in Northern Ireland 1969-1998*. Derry/Londonderry: INCORE; McKittrick, D., Kelters, S., Feeney, B., & Thorton, C. (1999). *Lost Lives: The Stories of the Men, Women and Children who Died as a Result of the Northern Ireland Troubles*. Edinburgh: Mainstream Publishing; and Sutton, M. (1994). *An Index of Deaths from the Conflict in Ireland 1969-1993*. Belfast: Beyond the Pale.



made, genuine acknowledgment from the governments, paramilitaries and wider institutions that had a role in the past such as churches, the judiciary, the media, the educational establishment, and those allocating services such as housing, has not been forthcoming.

When the particular question of truth recovery is raised in Northern Ireland typical responses follow: the truth is too unsettling, everyone has secrets and it is safer to leave these alone; Northern Ireland is small and the violence intimate, truth-telling would be destabilising; justice cannot be delivered, the Agreement has already granted early release, and state forces will never be held to account; truth-recovery is too expensive; acknowledgement can only be forthcoming once culpability has been conclusively established; no one would tell the truth anyway; and there are also those that fear truth is damaging and will destroy the peace process. Lundy and McGovern found, as was mentioned, that although some 50% of people thought a truth commission was important in Northern Ireland, 84% did not think that you would ‘necessarily get the truth’ from a truth commission.<sup>22</sup>

Working with Healing Through Remembering over the years, and through my own research, I have heard all these arguments (and others) on countless occasions. What is interesting about them from the international perspective however is that they are also the arguments used by other countries when arguing for a structured approach to dealing with the past, especially a truth commission.

I have heard people from Liberia to Peru argue for a truth commission because they fear that if nothing is done one version of the past will dominate history. If all accounts of the past are put on the table, all will come out tarnished, even those who think everything they did was correct. Similarly, if no one wants to “come clean” then an independent body with powers such as search, subpoena and seizure should be put in place to investigate the past. Those who do not cooperate, including the state, should be labelled as such. Some victims also voice the need for alternative mechanisms to courts because courts often fail to deliver justice, especially *en masse*. And finally, contrary to the view that truth is damaging, many argue that if the truth about the past does not come out, it will pollute the future.

So where does this leave the larger questions about the past in Northern Ireland? For me it highlights how people are better at articulating why the past should be avoided rather than why it should be confronted. What is at the heart of this resistance?

Graham Hayes writes:

The perpetrators fear the truth because of the guilt of their actions; the benefactors fear the truth because of the ‘silence’ of their complicity; some victims fear the truth because of the apprehension of forgetting through the process of forgiveness; and other victims fear the truth because it is too painful to bear.<sup>23</sup>

Hayes’ comments command respect for the difficulty of acknowledging the past, while they pose a challenge to us all. To this end, the Consultative Group on the Past need to ask: Why is it that we are better at thinking of why not to address the past than arguing why we should?

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<sup>22</sup> Lundy, P., & McGovern, M. (2006). A Truth Commission for Northern Ireland? *Northern Ireland Life and Times Survey: Research Update*, 46.

<sup>23</sup> Hayes, G. (1998). We Suffer our Memories: Thinking about the Past, Healing and Reconciliation. *American Imago*, 55(1), 29-50, p.46.

Giving the reason that people will not tell the truth as a justification why we should not interrogate the past is a case in point. Yes, lingering half-truths and lies, and a failure to take responsibility for actions and inactions is a reason why we should be wary when considering the issue of truth recovery, but it is also a reason as to why truth recovery is an imperative.

One critical question needs to be answered at this stage: is truth about past violations a right? Do we think knowing about the past from all sides, including paramilitaries, the two governments, as well as institutions that shaped the past from churches to the media, is important in principle? If so, then surely the next step is not to list all the reasons this will never be possible, but rather to ask how society can ensure truth can be delivered in a way that has political and social backing, independence and integrity.

When I think of answering such a question it is difficult to come to any other method than what is traditionally called a truth commission that could deliver this (or at least attempt to deliver this). Therefore the Group should consider the “ideal type” of what a truth commission would entail. This should be:

- Appointed independently and have international experts involved, operating with transparency (see point 3 in the next section) and not be made up of political party representatives, appointees or state representatives;
- Mandated to outline the causes, nature and extent of the conflict from the late 1960s to at least 1998, and arguably until the establishment of the Assembly in 2007;
- Mandated to focus on direct human rights violations committed by all parties to the conflict including the governments;
- Mandated to have a thematic focus on the role of other bodies such as media, churches, statutory service structures, judiciary, education system, academia, business community, security structures and the like in supporting, either by omission or commission, the context which allowed violence to happen and to paint a picture of the wider social and political context;
- Underpinned by co-operation from all paramilitary groups, and the British and Irish Governments, and others called to offer their account of the past;
- Underpinned by the opportunity for all victims to tell their stories about the past taking testimony from them in a supportive and listening environment, resulting in documenting how they suffered and the consequences of violence to them;
- Underpinned by an ethos aimed at redress for victims to the degree possible, including reparations and other mechanisms that victims or survivors request (e.g. apologies, meeting perpetrators, psychological or medical support);
- Underpinned by the opportunity for all perpetrators of human rights violations and those that authorized operations where there was a loss of life or injury occurred to give their account of events;
- Established with procedures that ensure a rigorous search for truth including access to security files in both jurisdictions, as well as all relevant documents about all acts of violence by State and non-State actors. Paramilitaries would be expected to outline their structures, command responsibilities and policies for all actions, as would the governments outline their security structures and policies. Such a body would need powers of search, subpoena and seizure to complement this process;
- Focused on trying to establish standards of what can be termed “legitimate” conduct in the past. At a bare minimum, all groups would have to account for where they think they contravened their own standards (but preferably international standards) on issues such as torture, murder, attempted murder, disappearance and killing of civilians;

- Aimed at, where possible, at naming the names of individuals who contravened what is seen as “legitimate” conduct;
- Underpinned by law with issues such as self-incrimination if individuals co-operate with such a body considered along with the rights of victims to justice;
- Flexible and dynamic in organizational structure. The body should not be overly litigious, or dominated by any specific perspective at an organizational or public level (e.g. a religious perspective to dealing with the past), and seek to operate as cost-effectively as possible.

I know in reading this list might sound unrealistic in the current context, but I pose such a model because if a model for truth recovery is not recommended by the Group, an argument has to be made why truth from all, in the rigorous way outlined above, is not being pursued. This is important because increasingly this is the expectation of other countries in the world coming out of conflict. In addition, there is a growing international trend to prosecute human rights violations from State and non-State actors (e.g. the International Criminal Court). To this end, Northern Ireland—and the players linked with the conflict in and about it—should have, in my opinion, to account for why they are making a conscious decision not account for violations in the past and explain why this is thought to be appropriate.

This is not to say that truth commissions or any other truth recovery mechanism can miraculously find “a truth”, which is obviously a difficult concept in itself. They are also not an end in themselves. Other approaches should also complement any truth recovery process (see Section 1 of this submission and the point 4 below). International lessons (e.g. the ongoing debates about the past in Chile, recent prosecutions and additional commissions years after the official truth commission<sup>24</sup>) suggest a truth commission does not draw a line in the sand. It can merely help shape future debate hopefully more constructively. In South Africa there is also a strong feeling that there is ‘unfinished business’ in relation to truth commission. For example, those who failed to take the opportunity to apply for amnesty during the life of the Truth and Reconciliation Commission have not been prosecuted for crimes such as murder and torture, and consequently never fully disclosed. For most victims truth and justice remain elusive. Most continue to live in poverty. Michael Ignatieff feels truth commissions do not find the complete truth but rather narrow the opportunity for ‘permissible lies’ about the past.<sup>25</sup> He is of the opinion that truth commissions can provide a frame for public discourse and memory. They create a new public space for an ongoing debate. This is a long-term process, and recommendations from the Group cannot be made within the narrow confines of a ‘quick fix’.

Clearly, the *process* of moving this debate forward is vital. Conceivably a more significant official and national attempt to deal with the past in Northern Ireland will only take place—as optimistic or perhaps impossible as it sounds—once the hard-nosed desire to score political points from the past is replaced by a more reconciliatory discourse across the board. This would need to be built on the recognition that at some point laying the past bare will be needed, and that this is the greatest, albeit difficult, guarantee of a stable future in the decades to come. A delicate balance needs to be struck. On one level, a degree of reconciliation is needed for all to

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<sup>24</sup> The Commission for Truth and Reconciliation (or Rettig Commission) was set up in 1990 under President Patricio Aylwin. The Commission's findings were presented to the nation on 4th March 1991. In Chile, however, those initially protected from justice, by a 1978 amnesty decree, are being prosecuted. The courts no longer apply the amnesty to forced disappearance cases. A new political will to enforce justice is now seemingly evident thirty years after the military coup that overthrew the Allende government in 1973. In Chile, the previous amnesty laws have effectively been rubbished. Although the 1990 Chilean truth commission might have helped some victims tell their story and uncover some truth, many still want justice decades later. Society is finally obliging.

<sup>25</sup> Ignatieff, M. (1996). *Articles of Faith. Index on Censorship*, 5(96), p.111.

agree to any official truth recovery process. Yet, at the same time, such reconciliation cannot compromise the truth that should emerge. This will require political courage and, dare I say, a level of grace and generosity seldom seen in Northern Ireland's conflicted history.<sup>26</sup> Leadership, primarily by political representatives and the governments, needs to be shown in this regard.

## **Conclusion: lessons learned**

This section briefly outlines some of the lessons from my research and work on local and international transitional justice issues that may be relevant to the Group's work.

**1. Inclusivity, consensus and respecting victim rights:** Any initiative to deal with the past works best if it is broadly inclusive and is driven by consensus. Truth-recovery processes and in fact any strategy for dealing with the past is most effective when there is consensus on their remit and focus. The same can be said for other processes such as establishing museums or holding days of remembrance. Memorials, for example, can be helpful as symbolic forms of reparations if established with a sound process.<sup>27</sup> However they can also be established as a way of nominally acknowledging the hurts of the past or avoiding the more difficult issues of truth and justice. All strategies for dealing with the past require genuine consultation and a serious engagement with the issues at hand. Victims also need to have their say in any process. Many may want to tell their stories and have them *officially* documented, something that some truth commissions have done particularly effectively. But equally it is naïve to think that most victims will be satisfied with this alone. Investigation and, potentially, prosecutions will be high on victims' agendas if international experience is anything to go by. This needs to be respected and become part of the debate from the outset, as does the discussion on victim rights as was mentioned earlier.

**2. Victim-centred but society wide:** Any process of dealing with the past must not only focus on victims alone because the whole of society generally has a responsibility to address the legacy of the past. Although processes for dealing with the past need to be victim-centred, the voting public more widely, governments, political parties, organisations, paramilitaries, security forces and public institutions need to be part of the process of dealing with the past. They all have a role in acknowledging the part they themselves played in the conflict and in finding ways to contribute effectively to addressing the consequences of conflict and meeting the needs of victims. The example of the South African TRC sectoral or institutional hearings<sup>28</sup> could be instructive in that regard.

**3. Transparency and public accountability:** Any process of remembering or dealing with the past needs to be transparent and publicly accountable. In South Africa, for example, selecting truth commissioners was a public process. The public was asked to nominate individuals that they felt had a good human rights track record to be commissioners. These individuals, some three hundred, were then interviewed in public (by a selection panel selected by President

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<sup>26</sup> This paragraph is taken from Hamber, B. (2003). Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland. *Fordham International Law Journal*, 26(4), 1074-1094.

<sup>27</sup> See Hamber, B. (2006). Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition. In P. De Greiff (Ed.), *The Handbook of Reparations* (pp. 560-588). Oxford: Oxford University Press for a discussion on the strengths and limitations of symbolic reparations.

<sup>28</sup> Mentioned above, but these included 'institutional hearings' into the way influential sectors of society (e.g. the medical and health professions, judiciary, business community, churches, and the media) contributed (or ameliorated) the creation of an environment conducive to human rights violations.

Mandela)<sup>29</sup> and in the full glare of television cameras. Their pasts were open to discussion if necessary and the public could send in questions to the panel if they wanted. Finally seventeen individuals were selected. In this way, the legitimacy of the commission was built from the start. This teaches us that transparency in selection process and operation is vital in truth-recovery related processes or any dealing with the past initiative.

**4. Authentic investment in uncovering the truth in a wide-ranging manner:** A genuine strategy for dealing with a violent past should not merely be set up for pragmatic and political reasons. There are several countries where truth commissions have been used as a way of ‘white-washing’ the past. There needs to be an authentic investment in uncovering the truth and dealing with the past as ways of learning lessons for the future. If one thinks of the example of a truth commission (as one mechanism for dealing with the past, of course), the discussion should not be narrowed at the outset (e.g. truth-recovery being discussed as something that is only dependent upon justice being relinquished as in the South African case, rather than a necessary process in itself). Some truth commissions have recommended prosecutions after their investigations. A creative and wide-ranging discussion is needed. As mentioned above, dealing with the past is long term and multifaceted, and cannot be reduced to one mechanism.

**5. Long-term commitment to reconciliation and not point-scoring:** Dealing with decades of conflict is long term, complex and time-consuming. It will not entail a single approach or model, and the past cannot simply be put to rest. International lessons suggest it takes decades. There are no quick fixes, as was mentioned earlier. We should not rush into opinions on different methods before we have agreed that remembering, acknowledgement, truth and justice are important issues for victims and society at large. These are the principles from which any process needs to begin. The past can only be dealt with if all concerned enter the debate in an inclusive and sincere way, aimed at entrenching peace as the ultimate goal. The importance of getting this right should not be underestimated and political parties have a responsibility to create a conducive environment for such work to take place. More broadly, any discussion needs to be aimed at societal reconciliation and not point-scoring. If we do not first agree on the underlying principles (such as the importance of truth and justice or the rights of victims) all discussion will be contorted and subject to political wrangling. This will ultimately result in mechanisms that will continue the conflict by different means, rather than find ways to resolve it constructively.

Dr Brandon Hamber  
24 January 2008

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<sup>29</sup> In some countries this process is being used to elect Commissioners to bodies such as truth commissions. The selection panel can be made up of political representatives meaning they have to come to a consensus on the individuals. Their involvement in the process is limited to this, and such bodies should not be made up of political appointees and should operate independently thereafter.